



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

NO PROTEST RECEIVED
Release to Manager, EO Determinations - Cincinnati

Date: [REDACTED]

DATE: [REDACTED]

SURNAME: [REDACTED]

Contact Person: [REDACTED]

Identification Number: [REDACTED]

Contact Number: [REDACTED]

INTERNAL REVENUE SERVICE
CINCINNATI, OHIO

RECEIVED
TEGE DIVISION

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code (the "Code") as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

You are organized under [REDACTED] law for charitable and educational purposes, including the making of distributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Code.

Your bylaws provide that your specific purpose is to seek out capital contributions from persons in the United States to provide loans of small amounts (microcredit) to families in [REDACTED]

You will raise funds from individuals and institutions in the United States in the form of loans. You will provide lenders with options regarding the amount of interest to be paid on their loans. The larger the loan amount, and the longer the term of the loan, the more interest the lender can receive. You expect that promissory notes will carry maturity periods of two to five years and carry interest rates between 8% and 10% annually. At this time, however, no loan agreements have been entered into.

The funds you receive from lenders in the United States you will lend, in turn, to an intermediary organization in [REDACTED]. Initially, that intermediary will be [REDACTED]. [REDACTED] in turn, will re-lend those funds to other microfinance organizations in [REDACTED]. You expect that any contract and loan agreement with [REDACTED] will require that [REDACTED] lend money only to microfinance organizations that meet certain social development and financial criteria. Your intent is that [REDACTED] lend to non-profit microfinance organizations that operate primarily in rural areas and that make microcredit loans primarily to poor women. You expect [REDACTED] to perform due diligence on potential borrowers, select microfinance organizations to receive loans, and monitor and service the loans. [REDACTED]

will require microfinance organizations that receive funds to report regularly on the use of the funds.

The microfinance organizations will use the money they borrow from [REDACTED] to make loans to [REDACTED]. Interest rates charged on such loans will be set by each lending microfinance organization and will be higher than usual commercial rates to compensate the microfinance organization for higher overhead costs and credit risks associated with lending to microenterprises. You, yourself, will not select the ultimate borrowers or monitor any of the loans that are ultimately made.

You will disseminate funds to [REDACTED] in increments. Each loan to [REDACTED] will be negotiated with a new promissory note with its own terms. [REDACTED] will pay you interest annually, which it will recoup by charging the microfinance organizations it lends to an appropriate rate of interest. You will use the interest paid by [REDACTED] to cover your own transaction costs, including interest you pay to your lenders in the United States. You will pay [REDACTED] a management fee for its services to you.

Section 501(c)(3) of the Code provides for the exemption from Federal income tax of organizations organized and operated exclusively for charitable purposes.

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations (the "regulations") defines the term "charitable" as including the promotion of social welfare by organizations designed to relieve the poor and distressed, or the underprivileged, to lessen neighborhood tensions, to eliminate prejudice and discrimination, or to combat community deterioration.

Rev. Rul. 67-149, 1967-1 C.B. 133, describes an organization that was formed for the purpose of providing financial assistance to several different types of organizations that are exempt from Federal income tax under section 501(c)(3) of the Code. The organization carries on no operations other than to receive contributions and incidental investment income and to make distributions of income to such exempt organizations at periodic intervals. The organization does not accumulate its investment income. The ruling holds that such organization is itself exempt from Federal income tax under section 501(c)(3) of the Code.

Rev. Rul. 68-489, 1968-2 C.B. 210, provides that an organization will not jeopardize its exemption under section 501(c)(3) of the Code, even though it distributes funds to nonexempt organizations, provided it retains control and discretion over the use of the funds for section 501(c)(3) purposes.

In Rev. Rul. 71-460, 1971-2 C.B. 231, a domestic corporation that is otherwise exempt from Federal income tax under section 501(c)(3) of the Code carries on part of its charitable activities in foreign countries. The ruling concludes that, since the organization's activities are charitable within the meaning of section 501(c)(3) of the Code when carried on within the United States, the conduct of such activities elsewhere does not preclude the organization from qualifying as an exempt organization under that section. The same conclusion would apply even if all of the organization's charitable activities were carried on in foreign countries.

Rev. Rul. 68-117, 1968-1 C.B. 251, describes a nonprofit domestic corporation formed to help poor rural inhabitants of developing countries by conducting a guided self-help program for social and economic development in the rural areas of these countries. This program includes the furnishing of expert guidance to subsistence-level farmer groups on modern agricultural methods and up-to-date marketing practices in an effort to raise their standard of living. The organization assists in arranging credit for these farmers on reasonable terms with a realistic repayment schedule. The organization trains farm families in home economics, cooking, nutrition, food preserving, and infant care. It conducts demonstrations on how to upgrade dilapidated housing at a cost that the farmers can afford. It also conducts public health training programs with an emphasis on preventative measures. The income of the organization is derived mainly from contributions. No fee is charged by the organization for any of its services. By raising the living standards of needy families in developing countries, facilitating access to markets and credits, teaching modern farming methods, and furnishing other technical assistance, the organization is furthering charitable and educational purposes. Accordingly, it is exempt from Federal income tax under section 501(c)(3) of the Code.

Your sole activity is to collect funds from lenders in the United States and then to lend those funds to [REDACTED] or some other intermediary microfinance organization in [REDACTED]. You cannot claim exemption under the reasoning of Rev. Rul. 67-149, *supra*, because [REDACTED] is not recognized as an exempt organization under section 501(c)(3) of the Code. Furthermore, there is no provision in any tax treaty between the United States and [REDACTED] for the recognition of each country's charities on a reciprocal basis. Consequently, the mere provision of funds to [REDACTED] or any other microfinance organization in [REDACTED] would not, in itself, be a charitable activity.

Although you expect that any agreement you enter into with [REDACTED] will include criteria for [REDACTED] to follow in awarding grants to other microfinance organizations, it is [REDACTED] that will screen and select loan recipients as well as monitor and service the loans. Additionally, the funds you lend to [REDACTED] will not be lent by [REDACTED] directly to microenterprises but, instead, to other microfinance organizations selected by [REDACTED]. It is those microfinance organizations that will lend funds to "end-user" microenterprises of their own choosing and on their own terms. Since you have no meaningful control or discretion over the funds once they are in the hands of the microfinance organizations, you do not qualify for exemption under the reasoning of Rev. Rul. 68-489, *supra*.

Even if [REDACTED] and the other microfinance organizations were considered to be your agents in providing funds directly to microenterprises, the lending of money to the poor at rates that are higher than ordinary commercial interest rates would not be considered a charitable activity were it carried out in the United States. Likewise, such activity is not charitable when conducted outside the United States. Consequently, you do not qualify for exemption under the reasoning of Rev. Rul. 71-460, *supra*.

Insofar as you do not conduct charitable activities directly in [REDACTED], you are unlike the organization described favorably in Rev. Rul. 68-117, *supra*. That organization not only arranged credit for poor farmers at reasonable rates, but also provided training and guidance programs in farming, public health, and home economics at no cost to the recipients.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service

400
... ..
... ..

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[REDACTED]
If you have any questions, please contact the person whose name and telephone number
are shown in the heading of this letter.

Sincerely,
[REDACTED]
[REDACTED]